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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/564,341	01/24/2006	Michael Vogel	1016710010P	7825
34284	7590	11/12/2009		
Rutan & Tucker, LLP. 611 ANTON BLVD SUITE 1400 COSTA MESA, CA 92626			EXAMINER HORNBERGER, JENNIFER LEA	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 11/12/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/564,341	Applicant(s) VOGEL ET AL.	
	Examiner JENNIFER L. HORNBERGER	Art Unit 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-30 is/are pending in the application.
- 4a) Of the above claim(s) 2,6,7,13,15,17-20,25 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,8,10-12,14,16,21-24,26,27,29 and 30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/17/2009, 02/15/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3734

DETAILED ACTION

Election/Restrictions

1. Claims 2, 6, 7, 13, 15, 17-20, 25, and 28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 07/17/2009. It is noted that claim 17 was identified in the restriction requirement as corresponding to species II. However, upon further examination it was determined that the second spacing member is not disclosed as being movable relative to the first end of the elongate body with respect to the elected embodiment. Therefore, claim 17 is withdrawn as being drawn to a non-elected species.

Claim Objections

2. Claims 14, 16, 21, and 30 are objected to because of the following informalities: Applicant appears to use "elongate member" and "elongate body" interchangeably. Applicant should amend the claims so that the phrase used to identify the "elongate body" is consistent throughout the claims. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

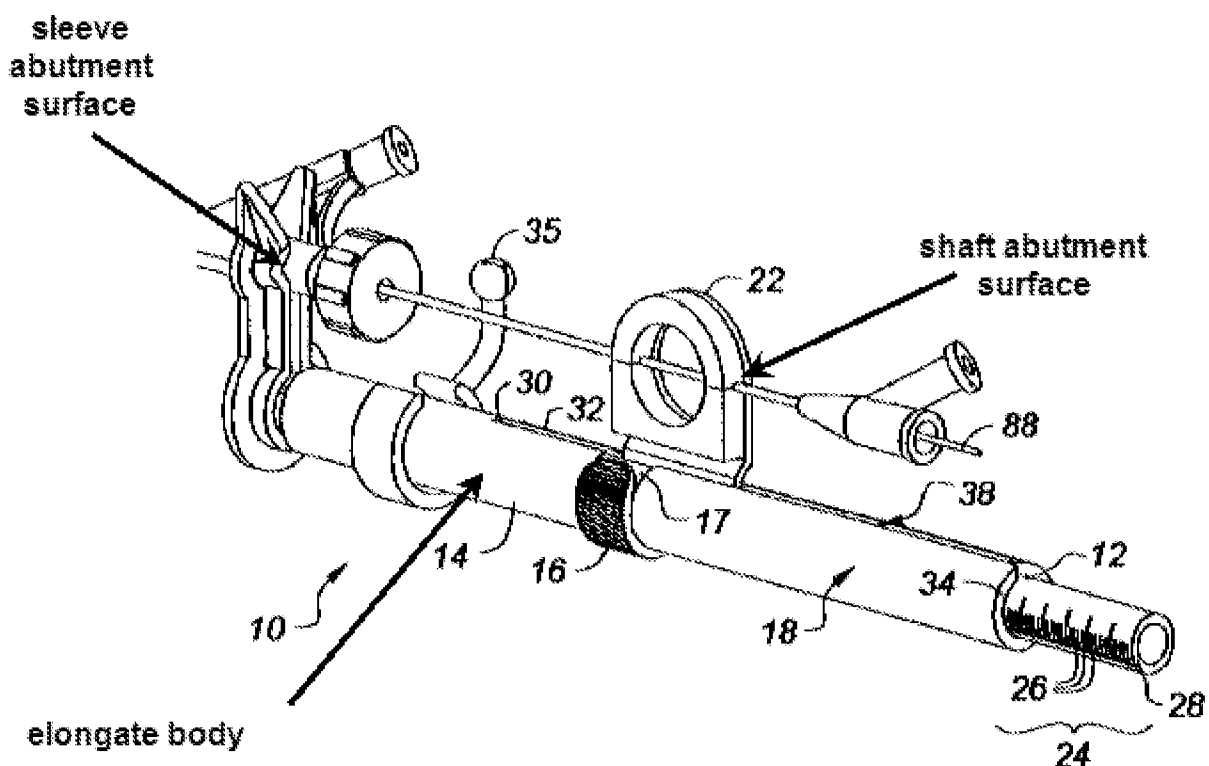
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3-5, 8, 10-12, 14, 16, 21-23, 26, 27, 29, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Korotko (US 6,450,976).

Regarding claim 1, Korotko et al. disclose a device capable of being used as a safety clip for a medical catheter that comprises a shaft and a sleeve, the device comprising: an

Art Unit: 3734

elongate body (14) having a first end, a second end and an intermediate portion; an attachment member (35); and a sleeve abutment surface (see figure below) at the first end of the body and a shaft abutment surface (see figure below) at the second end of the body spaced from the first end of the body, one of the sleeve abutment surface and shaft abutment surface defining a sliding member (22) configured for stepless adjustment of the distance separating said sleeve abutment surface and said shaft abutment surface (col. 5, ln. 22-25).



Regarding claim 3, Korotko et al. disclose the attachment member (35) is slidable on the elongate body (col. 4, ln. 3-19).

Regarding claim 4, Korotko et al. disclose the attachment member (35) is positioned along the intermediate portion of the elongate body (Fig. 5; col. 4, ln. 3-19).

Art Unit: 3734

Regarding claim 5, Korotko et al. disclose the slider (22) is configured to slide on the body and defines one of the sleeve abutment surface and the shaft abutment surface (col. 5, 22-25).

Regarding claim 8, Korotko et al. disclose a releasing mechanism for releasing the attachment member from the catheter, without disturbing the spacing between said abutment surfaces (col. 4, ln. 11-19).

Regarding claim 10, Korotko et al. disclose the distance between said abutment surfaces can be selected, and fixed against any further adjustment (col. 5, ln. 2-25).

Regarding claim 11, Korotko et al. disclose a device capable of being used as a safety clip for a medical catheter, comprising: an elongate body (14) having a first end and a second end spaced from the first end; an attachment member (35) coupled to the elongate body; and a first spacing member (22) coupled to the first end of the elongate body, at least one of the first spacing member and elongate body configured to permit movement of the first spacing member relative to the second end of the elongate body (col. 5, ln. 22-25).

Regarding claim 12, Korotko et al. disclose the elongate body (14) includes a slot (38) and the first spacing member (22) includes a portion movable within the slot (col. 5, ln. 22-25).

Regarding claim 14, Korotko et al. disclose the attachment member (35) includes a bore configured to permit passage of the elongate body (Fig. 5).

Regarding claim 16, Korotko et al. disclose a second spacing member (11) coupled to the second end of the elongate body (Fig. 1, 5)

Regarding claim 21, Korotko et al. disclose the attachment member (35) is positioned along the intermediate portion of the elongate body (Fig. 5; col. 4, ln. 3-19).

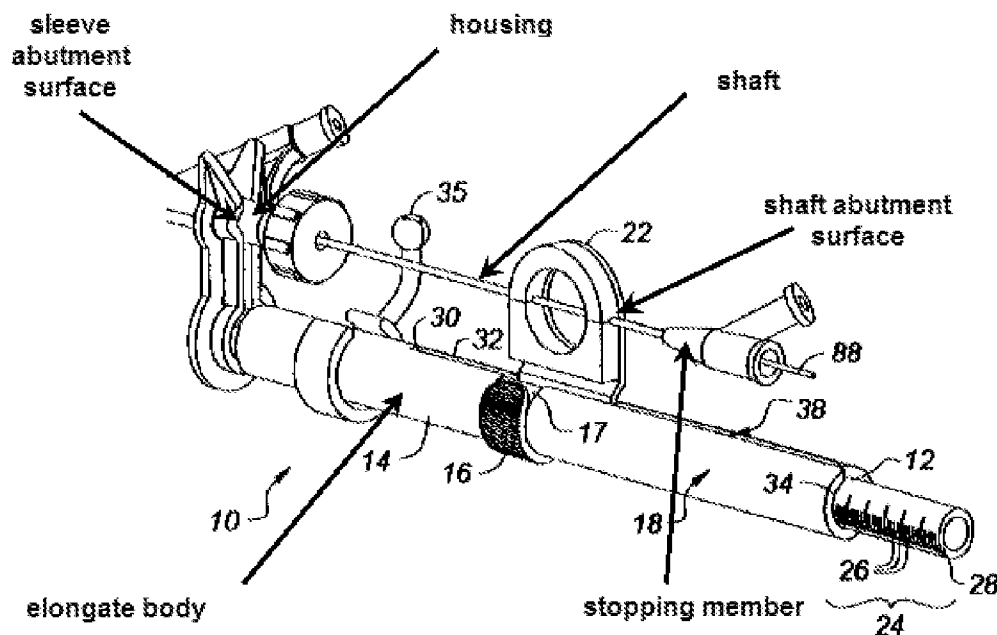
Regarding claim 22, Korotko et al. disclose the attachment member (35) includes an engagement member (col. 4, ln. 11-14)

Art Unit: 3734

Regarding claims 11, 22, and 23, Korotko et al. disclose a safety clip for a medical catheter, comprising: an elongate body (14) having a first end and a second end spaced from the first end; an attachment member (11) coupled to the elongate body; and a first spacing member (22) coupled to the first end of the elongate body, at least one of the first spacing member and elongate body configured to permit movement of the first spacing member relative to the second end of the elongate body (col. 5, ln. 22-25), the engagement member includes a plurality of sets of jaws, each of the sets of jaws configured to grip a different diameter member of a medical catheter (col. 5, ln. 26-41).

Regarding claim 26, Korotko et al. disclose the first spacing member (22) is configured to engage a portion of a medical catheter (col. 26-37).

Regarding claim 27, Korotko et al. disclose the safety clip is attached to a medical catheter including a shaft and a sleeve together configured for relative movement, the sleeve including a housing and the shaft including a stopping member, wherein the first spacing member abuts the stopping member (Fig. 5).



Art Unit: 3734

Regarding claim 29, Korotko et al. disclose further comprising a second spacing member (11), the attachment member engaging (35) the shaft at a location between the first spacing member (22) and second spacing member (11; Fig. 5).

Regarding claim 30, Korotko et al. disclose the second spacing member (11) is fixed to the elongate member and abuts the housing.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Korotko et al. (US 6,450,976) in view of Blasnik et al. (US 4,976,721).

Regarding claim 24, Korotko et al. disclose that the engagement member includes at least one set of jaws but fail to disclose the jaws comprising thermoplastic material. Blasnik et al. disclose a clamp being made from a thermoplastic material. Blasnik et al. discloses forming the device from injection molded thermoplastic is inexpensive to manufacture (col. 35-44). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have made the engagement member (11) from a thermoplastic, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER L. HORNBERGER whose telephone number is (571)270-3642. The examiner can normally be reached on Monday through Friday from 8am-5pm, Eastern time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571)272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jlh
11/09/2009

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3734